



# ***PCG 2021/D2 - Allocation of professional firm profits - ATO compliance approach***

 This cover sheet is provided for information only. It does not form part of *PCG 2021/D2 - Allocation of professional firm profits - ATO compliance approach*

 For information about the status of this draft guideline, see our [Advice under development program](#).



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## **Draft Practical Compliance Guideline**

# **Allocation of professional firm profits – ATO compliance approach**

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### **❶ Relying on this draft Guideline**

This Practical Compliance Guideline is a draft for consultation purposes only. When the final Guideline issues, it will have the following preamble:

*This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.*

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### **What this draft Guideline is about**

1. This draft Guideline<sup>1</sup> sets out the ATO's proposed compliance approach to the allocation of profits by professional firms.
2. The Guideline explains how the ATO intends to apply compliance resources when considering the allocation of professional firm profit or income in the assessable income of the individual professional practitioner (IPP).
3. This Guideline also assists the IPP to self-assess their risk against risk assessment factors.
4. This Guideline has been formulated after consultation with legal and accounting professional bodies, in order to understand the commercial, structural and operational issues affecting professional firms and, more broadly, their clients in other professions.
5. Historically, most professional firms were partnerships of natural persons. Professional firms are now structured in a variety of ways, reflecting the economic and

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<sup>1</sup> All further references to 'this Guideline' refer to the Guideline as it will read when finalised. Note that this Guideline will not take effect until finalised.

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legal choices made by owners of those firms. In some cases, these structures may be used in ways that give rise to different tax consequences and resulting tax compliance risks.

6. The ATO is concerned about arrangements involving taxpayers who redirect their income to an associated entity from a business or activity which includes their professional services, where it has the effect of altering their tax liability.

7. The use of companies, trusts and other business structures do not of themselves give rise to avoidance concerns. Further, the profit generated by the business may not be wholly generated by the individual and there may also be good non-tax reasons as to why the controller of a business receives significantly less of the business' profits than would otherwise be the case. However, the use of those structures can provide the controllers of a business with an opportunity to redirect income from them. When the business involves the provision of services, we will be concerned with arrangements where the compensation received by the individual is artificially low while related entities benefit (or the individual ultimately benefits), and commercial reasons do not justify the arrangement.

8. The Commissioner's view is that the profit or income of a professional firm may comprise different components – reflecting a mixture of income from the efforts, labour and application of skills of the firm's IPPs (that is, personal exertion) and income generated by the business structure.

9. We are aware that in some cases, professional firm income has been treated as being derived from a business structure, even though the source of that income remains, to a significant extent, the provision of professional services by one or more individuals. In that context, we may apply Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) where income is redirected away from the individuals, despite the existence of a business structure.

10. This Guideline explains the ATO's risk-based approach to IPPs and how their professional firms allocate profits. In order for it to apply, two 'gateways' must be passed. Firstly, we expect there to be sound commercial rationale for entering into and operating the arrangement or structure – see Gateway 1 at paragraphs 34 to 41 of this Guideline. Secondly, there must not be certain 'high-risk features' – see Gateway 2 at paragraphs 42 to 54 of this Guideline.

11. Where an IPP's circumstances pass Gateways 1 and 2, the risk assessment framework explained in this Guideline may be used by the practitioner and the ATO to understand what compliance attention will generally be given to the arrangement.

12. Where an IPP's circumstances do not pass Gateways 1 and 2, the risk assessment framework is not available to them.

13. Overall, schemes which are designed to ensure that the IPP is not directly rewarded for the services they provide to the business, or receives a reward which is substantially less than the value of those services, are considered high risk by the ATO. Where an IPP attempts to alienate amounts of income flowing from their personal exertion (as opposed to income generated by the business structure), the Commissioner will consider applying the anti-avoidance provisions under Part IVA of the ITAA 1936 or other integrity rules – see paragraphs 32 and 33 of this Guideline.

#### **Date of effect**

14. Once finalised, this Guideline will apply prospectively from 1 July 2021.

15. The use and application of this Guideline will be reviewed from and during 2022. Any revisions to improve its efficacy will be made on an 'as necessary' basis.

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16. For discussion of transitional arrangements, see paragraphs 102 to 108 of this Guideline.

### Definitions

17. Definitions of certain terms used in this Guideline are as follows:

- The **individual professional practitioner** (IPP) is an individual who provides services to clients of the firm, or to the firm itself, in circumstances where the IPP and/or associated entities have a legal or beneficial interest in the firm.
- **Personal services income** (PSI) is income earned mainly as a result of personal efforts or skills of the IPPs, rather than being generated by assets or employees of the firm and is dealt with under the PSI rules in Part 2-42 of the *Income Tax Assessment Act 1997* (ITAA 1997).
- **Professional firms** include, but are not limited to, those providing services in the accounting, architectural, engineering, financial services, legal and medical professions.
- A **professional** is a member of a recognised profession.

### How to use this Guideline

18. The framework in this Guideline will be used to differentiate risk and tailor our engagement with IPPs.

19. You may use this Guideline to:

- determine the level of risk regarding your profit allocation arrangement based on the risk assessment framework and associated schedule
- determine the level of engagement that you can expect from us based on your assessment of the risk regarding your arrangement, and
- support your application for binding advice.

20. We expect you to annually assess your eligibility to apply this Guideline. If you want to apply this Guideline, we expect you to document your assessment of your eligibility to apply this Guideline and also review your eligibility as your business or arrangement changes.

21. This Guideline is limited to the risks associated with the allocation of profits within professional firms. It does not affect our compliance approach to other tax issues that might arise in connection with your professional firm arrangements, for example, whether Division 7A of Part III of the ITAA 1936 applies to an arrangement within the IPP's group. If we consider that your arrangement poses a risk under other tax provisions, we will review your arrangement holistically.

22. This Guideline does not replace, alter or affect the operation of the law in any way. It does not relieve you of your legal obligation to comply with all relevant tax laws, or create any safe harbour administrative concessions. This Guideline is not a technical analysis of the judicial decisions in this area.

23. This Guideline does not replace, alter or affect the ATO view as expressed in public rulings and other publications. A list of related public rulings is contained in the References section of this Guideline.

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24. For an explanation of the arrangements to which this Guideline applies, see paragraphs 27 to 29 of this Guideline.

### ***Preconditions of applying this Guideline***

25. This Guideline applies if all of the following criteria are met:

- an IPP provides professional services to clients of the firm, or is actively involved in the management of the firm and, in either case, the IPP and/or associated entities have a legal or beneficial interest in the firm
- the income of the firm is not PSI
- the firm operates by way of a legally effective structure, for example, partnership, trust or company
- an IPP is an equity holder, that is, an IPP holds full rights to participate in the voting, management and income of the firm
- the arrangement is commercially driven, that is, it satisfies Gateway 1, and
- the firm and IPP do not demonstrate any high-risk features, that is, it satisfies Gateway 2.

26. However, if all of the criteria in paragraph 25 of this Guideline are not satisfied and you would like to discuss if the application of this Guideline is appropriate in your circumstances, you should engage with the ATO by emailing [ProfessionalPdts@ato.gov.au](mailto:ProfessionalPdts@ato.gov.au).

### ***Arrangements to which this Guideline applies***

27. The ATO recognises there are a wide variety of businesses of all sizes where equity holders contribute to the business through the provision of their skilled labour. However, this Guideline only applies to tax compliance risks arising from the particular commercial and regulatory contexts for professional firm arrangements.

28. As a result of consultation with legal and professional bodies, this Guideline applies to relevant arrangements within professional firms including, but not limited to, those providing services in the accounting, architectural, engineering, financial services, legal and medical professions.

29. A professional is a member of a recognised profession. The term ‘profession’ is not defined by tax legislation. For the purpose of this Guideline, the Australian Council of Professions provides useful reference for defining a profession<sup>2</sup>. From this guidance, we consider the following as indicators of a professional:

- those who are required to be accredited and adhere to ethical guidelines in order to enter into and maintain practice in the relevant field
- those who are accepted by the public as possessing special knowledge and skills in a widely recognised body of learning, derived from research, education and training at a high level and who are prepared to apply this knowledge and exercise these skills in the interest of others
- their behaviour and practice is beyond the personal moral obligations of an individual

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<sup>2</sup> Australian Council of Professions (2003), [www.professions.org.au/what-is-a-professional/](http://www.professions.org.au/what-is-a-professional/), accessed 2 February 2021.

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- they uphold a high standard of behaviour in respect to the services provided to the public and in dealing with professional colleagues.

### ***Income of the firm that is not personal services income***

30. This Guideline only applies where an IPP has received an amount of income from a practice which generates its income from a business carried on in a business structure that is not subject to the PSI regime.

31. For the purposes of determining whether income earned by an IPP from a professional practice is PSI, the ATO will continue to apply the views set out in its existing rulings.<sup>3</sup>

### ***Part IVA and this Guideline***

32. We consider that Part IVA of the ITAA 1936 may apply to schemes which are designed to ensure that the IPP is not appropriately rewarded for the services they provide to the business, or receives a reward which is substantially less than the value of those services. Where an IPP attempts to alienate amounts of income flowing from their personal exertion (as opposed to income generated by the business structure), the ATO may consider the application of the anti-avoidance provisions under Part IVA.

33. The application of anti-avoidance provisions depends on a broad survey of the circumstances in each case. Just because a Gateway is not satisfied, or the arrangement is in the higher risk zone (red zone), does not necessarily mean Part IVA applies. The relevance of failing a Gateway, or being in the red zone (or the amber zone), is that the Commissioner is likely to give closer scrutiny to the arrangement, including a deeper consideration of whether anti-avoidance provisions apply.

### ***Gateway 1 – commercial rationale***

34. Gateway 1 considers whether the implemented arrangement and the way in which it operates are commercially driven. This means that there must be a genuine commercial basis for the arrangement and also for the way in which profits are distributed.

35. There must be a genuine commercial rationale for the arrangement for all parties involved and the arrangement must achieve that end. The arrangement should reflect the commercial needs of the business. For example, the arrangement is likely to enhance, assist or improve the business' ability to produce income or make profits, or the commercial benefits asserted to be achieved by the arrangement are justified.

36. The arrangement must also be appropriately documented and there must be evidence that the stated commercial purpose was achieved as a result of the arrangement. For example, the mere assertion of 'asset protection' for an IPP is not sufficient if the arrangement does not actually provide improved asset protection.

37. Where there are aspects of the arrangement that would not be expected to be present in a more straightforward or commercial dealing, there must be a commercial rationale for the arrangement.

38. The legal form and documentation must be consistent with the economic substance of how the professional firm operates in practice. The presence of discrepancies would indicate artifice or contrivance in the manner in which the arrangement is carried out. For example, arrangements that are not legitimately implemented or are operating in a manner

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<sup>3</sup> Related public rulings are set out in the References section of this Guideline.

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contrary to, or outside the scope of, the relevant constituent documents, would not adequately demonstrate a commercial rationale for the arrangement. We may consider other documents, such as internal management documents, procedures and practices as well as the firm's constituent documents, in our analysis.

39. When considered in its entirety, any change in tax performance, absent any other non-tax related practical changes, is a strong indicator of a lack of commercial rationale for the arrangement.

40. Indicators to the Commissioner that an arrangement lacks a sound commercial rationale include the following:

- The arrangement seems more complex than is necessary to achieve the relevant commercial objective.
- The arrangement includes a step, or a series of steps, that appear to serve no real purpose other than to gain a tax advantage, for example
  - transactions which interpose an entity to access a tax benefit
  - intra-group or related-party dealings that merely produce a tax result, or
  - arrangements involving a circularity of funds or no real money.
- The tax result of the arrangement appears at odds with its commercial or economic result, for example, a tax loss is claimed for what was a profitable commercial venture or transaction.
- The arrangement results in little or no risk in circumstances where significant risks would normally be expected, for example
  - use of non-recourse or limited recourse loans which limit the parties' risk or actual detriment in relation to debts/investments
  - arrangements where the taxpayer's risk is significantly limited because of the existence, for example, of a 'put' option.
- The parties to the arrangement are operating on non-commercial terms or in a non-arm's length manner, for example
  - financial arrangements made on unusual terms, such as interest rates above or below market rates, insufficient security, or deferment of repayment of the loan until the end of a lengthy repayment period
  - transactions which do not occur at market rates/value.
- There is a gap between the substance of what is being achieved under the arrangement (or any part of it) and the legal form it takes, for example, arrangements where a series of transactions taken together produce no economic gain or loss, such as where the whole scheme is self-cancelling.

41. There must also be a genuine commercial basis for the way in which profits are distributed within the group, especially in the form of remuneration paid. Relevant considerations are whether:

- the IPP actually receives an amount of the profits or income which reflects a reward for their personal efforts or skill
- the income has been distributed in substance
- the IPP ultimately benefits from the distribution of income to associates, which is referrable to the personal efforts or skill of the IPP



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- the remuneration is less than a true commercial comparable and would not be perceived as an arm's length payment
- there are loan accounts relevant to the arrangement – whose name those accounts are in and whether they are aware of the loans
- the payment recipients
  - have control in managing the entity's cash flows and financials
  - actually receive the money and keep it, or whether it is distributed out to others. Where they do receive the money, whether it is available for their use and enjoyment, or is in fact predominantly for the IPP's use and enjoyment.

### **Gateway 2 – high-risk features**

42. If, after considering Gateway 1, you conclude that your arrangement is commercially driven, you must then assess whether your arrangement contains any high-risk features, such as those arrangements covered by a Taxpayer Alert. We also consider the following as potentially high-risk features:

- financing arrangements relating to non-arm's length transactions
- exploitation of the difference between accounting standards and tax law
- arrangements where a partner assigns a portion of a partnership interest that are materially different in principle from *Everett*<sup>4</sup> and *Galland*<sup>5</sup>
- multiple classes of shares and units held by non-equity holders.

43. If you are unsure whether your arrangement has one or more of these features and whether it would be considered high risk, you should engage with the ATO by emailing [ProfessionalPds@ato.gov.au](mailto:ProfessionalPds@ato.gov.au).

44. These features are described in more detail in paragraphs 45 to 55 of this Guideline.

### ***Financing arrangements relating to non-arm's length transactions***

45. The Commissioner considers arrangements with related parties generally involve a greater level of potential tax compliance risk. The Commissioner does not accept there is a commercial purpose when an associated entity of the IPP utilises finance to acquire an existing portion of the IPP's equity interest in a professional firm. Therefore, financing arrangements involving associated entities that give rise to a tax benefit are considered high risk.

#### ***Example 1 – financing arrangements relating to non-arm's length transactions***

46. *An IPP disposes of a portion of their interest in a professional firm to an associated discretionary trust which borrows money from a bank to pay for the transaction. The borrowing is secured and guaranteed by the IPP as an individual. The trust obtains a deduction for the interest paid on the borrowing. The IPP uses the money received from the trust for the interest in the firm to pay off mortgage debt on their primary residence. The*

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<sup>4</sup> *Taxation, Commissioner of (Cth) v Everett* [1980] HCA 6 (*Everett*).

<sup>5</sup> *Commissioner of Taxation (Cth) v Galland* [1986] HCA 83 (*Galland*).

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*effect of this financing arrangement is to convert non-deductible debt to deductible debt through the use of a non-arm's length transaction.*

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### **Exploitation of the difference between accounting standards and tax law**

47. The ATO has identified arrangements that create artificial differences between taxable income and accounting income. Some arrangements create differences which are exploited to have the income assessed to individuals or businesses that pay little or no tax, while allowing others to enjoy the economic benefits.

48. Note that work in progress and employee leave provisions would not ordinarily give rise to any concern under this factor.

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### **Example 2 – amortising an intangible asset**

49. *An IPP may utilise the different treatment between accounting and tax for amortising an intangible asset (for example, the assigned portion of the IPP's interest in the firm). Pursuant to accounting standards, the intangible asset should be tested for impairment or amortisation each year. Where the book cost exceeds the net realisable value, the asset should be impaired. The impairment or amortisation is a non-cash accounting expense and does not give rise to a tax deduction. This will likely generate a situation whereby there is a difference (not otherwise being a temporary difference) between the taxable income, the accounting income and the cash available for distribution resulting in the ability to distribute the taxable income to certain entities, with the cash being distributed by other means to other entities.*

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### **Arrangements that are materially different in principle to Everett and Galland**

50. The Commissioner considers the following arrangements to be materially different in principle to *Everett and Galland* where a partner assigns a portion of their partnership interest:

- arrangements purporting to admit an individual as a partner, where the individual is not an owner or equity holder in the partnership, with full rights, obligations and entitlements, and
- arrangements where the IPP's relationship has characteristics indicating their relationship with the partnership is akin to a contractor or employee.

51. Factors we consider may indicate there has been a departure from *Everett and Galland* include but are not limited to:

- indemnification of non-owner/equity holders by equity partners against any professional liability in respect of actions against the partnership
- a fixed draw or salary, particularly where there is limited or no exposure (without indemnification) to the risks and benefits associated with the performance of the partnership as to the payment of that draw or salary, and
- a lack of rights to full participation in management and the benefits of the partnership, relative to other partners.

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**Example 3 – non-equity partner assigns income**

52. An individual is made a non-equity partner in a professional firm. The non-equity partner is not required to make a capital contribution, has a fixed draw component of \$130,000, and has no right to vote or participate in the management of the firm. The non-equity partner undertakes an Everett assignment of their income to their family discretionary trust. The ATO does not consider this arrangement to be in line with the principles in Everett and Galland.

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**Multiple classes of shares and units held by non-equity holders**

53. The ATO considers the issuing of multiple classes of shares in a company or units in a unit trust in a professional firm, without the accompanying voting rights, to be a high-risk feature, due to the potential for alienation of income by professionals that are non-owner or non-equity holders in a structure. Further, the discretionary nature of these shares or units is usually linked to the personal performance of the non-owner or non-equity holder in order to receive any distribution or dividends.

54. An example is a dividend access share arrangement which pays dividends, at the discretion of the directors of the firm, to the dividend access shareholders holders or unit holders (who are related entities of a professional who is not an owner or equity holder). The entitlement to receive any distribution or dividends is linked to the personal performance of the non-owner/equity holder.

**Involves an arrangement covered by a Taxpayer Alert**

55. The ATO signals its concerns about particular arrangements to the public by releasing Taxpayer Alerts. If you have arrangements which are similar to, or the subject of, a Taxpayer Alert, you should contact the ATO prior to applying this Guideline.

**Gateway 2 summary**

56. The ATO considers the arrangements in Examples 1 to 3 of this Guideline illustrate high-risk features. We would expect the IPP to engage with the ATO where any of these features appear in their arrangement.

57. The high-risk features outlined in paragraphs 45 to 54 of of this Guideline are not exhaustive and will be subject to amendment and addition as the ATO becomes aware of further high-risk arrangements.

58. The absence of any published guidance on a specific arrangement or a variation on an arrangement does not mean that the ATO accepts or endorses that arrangement or variation or the underlying tax consequences.

59. Where you are uncertain of the Commissioner's view of your arrangement, you should engage with the ATO by emailing [ProfessionalPpts@ato.gov.au](mailto:ProfessionalPpts@ato.gov.au).

**Allocation of compliance resources**

60. This Guideline does not constitute a 'safe harbour'.

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61. This Guideline does not relieve you of your legal obligation to self-assess your compliance with all relevant taxation laws. It is designed to give you confidence that, if your circumstances align with the low-risk rating set out in this Guideline, we will generally not allocate compliance resources to test the relevant tax outcomes of your arrangement.

62. If we do undertake a review of your arrangement, our starting point will be the contemporaneous documentation substantiating the arrangement you have applied.

63. The ATO is continuing work to identify taxpayers whose circumstances fall outside this Guideline or who wish to nominate themselves as a test case to obtain further judicial guidance.

### **The risk assessment framework**

64. The Commissioner's compliance approach will vary depending on the risk rating of your allocation of profit arrangement. The following principles will assist you to understand how the Commissioner assesses risk in relation to allocation of profit arrangements and generally allow you to assess your compliance risk.

65. The ATO has adopted a risk assessment methodology made up of three risk zones, namely low risk, moderate risk and high risk, to assess your profit allocation arrangement. The risk zone applicable to your arrangement is determined by combining your scores for each of the three risk assessment factors in paragraph 70 of this Guideline.

66. If your arrangement does not have a low (that is, green zone) risk rating (per paragraph 71 of this Guideline), we consider your arrangement, or your treatment of that arrangement, is at risk of giving rise to an inappropriate tax outcome. Therefore, we will generally conduct some form of compliance activity to further test the tax outcomes of your arrangement.

67. Where other compliance issues are present you will remain at high risk. Such risks could include, but are not limited to:

- cases of non-recognition of net capital gains
- transfer pricing
- misuse of the superannuation system
- promotion of schemes
- failure to lodge returns or a history of late lodgment of returns
- income injection to entities with carried forward losses
- avoidance of Division 7A of Part III of the ITAA 1936
- the application of section 100A of the ITAA 1936
- inappropriate access to low income tax offsets or other benefits, and
- non-tax advantages which are dependent on taxable income.

68. In cases where other compliance issues are evident, this Guideline does not apply. This is the case irrespective of whether you have self-assessed that you are low risk in accordance with this Guideline.

### **How to risk assess your arrangement**

69. Where you satisfy Gateways 1 and 2, you may self-assess your risk level against each of the risk assessment factors described in paragraphs 75 to 93 of this Guideline.

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Your performance against that risk assessment factor has a corresponding score. The aggregate of your score against each risk assessment factor determines which risk zone you fall within.

#### *Risk assessment scoring table*

70. The following table sets out the score for each risk assessment factor:

Risk assessment factor	Score					
	1	2	3	4	5	6
<b>(1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP</b>	> 90%	>75% to ≤ 90%	>60% to ≤ 75%	>50% to ≤ 60%	>25% to ≤ 50%	≤25%
<b>(2) Total effective tax rate for income received from the firm by the IPP and associated entities<sup>6</sup></b>	> 40%	>35% to ≤ 40%	>30% to ≤ 35%	>25% to ≤ 30%	>20% to ≤ 25%	≤20%
<b>(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm</b>	> 200%	>150% to ≤ 200%	>100% to ≤ 150%	>90% to ≤ 100%	>70% to ≤ 90%	≤70%

#### *Risk zones*

71. The following table sets out the risk level applicable to the scores obtained by using the table at paragraph 70 of this Guideline:

Risk zone	Risk level	Aggregate score against first two factors	Aggregate of all three factors*
<b>Green</b>	Low risk	≤ 7	≤ 10
<b>Amber</b>	Moderate risk	8	11 & 12
<b>Red</b>	High risk	≥ 9	≥ 13

**\*Note:** The use of the third risk assessment factor is optional as we recognise that it is difficult to determine accurately.

72. If using all three risk assessment factors, to be considered low risk (green zone), your score must be 10 or less.

73. The first two risk assessment factors may be used (instead of all three) where it is impractical to accurately determine an appropriate commercial remuneration against which to benchmark. To be considered low risk (green zone), in that circumstance, your aggregate score for those two factors must be seven or less.

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<sup>6</sup> **Note:** Any levy based on taxable income (for example, Medicare levy, Medicare levy surcharge or the Temporary budget repair levy) is not included in the calculation of the effective tax rate.

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74. Where an IPP returns 100% of the profit entitlement from the firm in their personal tax return (risk assessment factor 1), the IPP is automatically within the green zone. There is no need to assess against the other risk assessment factors.

#### **Explanation of the risk assessment factors**

*Risk assessment factor 1 – proportion of profit entitlement from the whole of firm group returned in the hands of the IPP*

75. Risk assessment factor 1 provides a score, depending on the proportion of the profit entitlement returned personally in the hands of the IPP to the total amount of income to which the IPP and his or her associated entities are collectively entitled (whether directly or indirectly) from the whole of firm group.

76. Income from the whole of firm group will include the income from the service entity and other associated businesses to the firm, to which the IPP or their associated entities are entitled.

#### *Risk assessment factor 2 – effective tax rate*

77. Risk assessment factor 2 provides a score depending on the total effective tax rate paid by the IPP and their associated entities.

78. The total effective tax rate is calculated using the following formula:

$$\frac{\text{Total tax paid by the IPP and associated entities of the IPP on professional firm income}}{\text{Total firm income collectively received}} \times 100 = \text{Total effective tax rate}$$

Where:

- **total tax paid by the IPP and associated entities of the IPP on professional firm income** is the larger of
  - (a) the tax that would be payable on firm-related amounts (including income and associated deductions) assuming it was the only income with no other sources of income or deductions, or
  - (b) the amount being the income tax paid for the year, less the amount which would be payable if firm-related amounts (including income and associated deductions) were disregarded.

79. Your total effective tax rate is not the marginal rate applicable to the last dollar of income you derive. Rather, it is referable to the average rate of tax paid across the entire income from the firm.

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#### **Example 4 – calculation of effective tax rate**

80. An IPP receives \$600,000 of firm income and pays \$240,667 in tax on this income. As the IPP has no other income or deductions, the IPP's total tax paid is the same under both subparagraphs (a) and (b) of paragraph 78 of this Guideline.

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81. Associate 1 of the IPP receives \$100,000 of firm income and pays \$22,967 in tax on this income. As Associate 1 has no other income or deductions, Associate 1's total tax paid is the same under both subparagraphs (a) and (b) of paragraph 78 of this Guideline.

82. Associate 2 of the IPP receives \$100,000 of firm income, and has \$50,000 of other income. Under:

- subparagraph 78(a) of this Guideline (tax payable on firm income only), the amount would be \$22,967
- subparagraph 78(b) of this Guideline, the amount would be \$33,850. On all income (\$150,000), Associate 2 would pay \$40,567 in tax. If the firm income of \$100,000 was disregarded, Associate 2 would have paid tax of \$6,717. Associate 2 is therefore considered to have paid \$33,850 on the \$100,000 firm income (being the difference between \$40,567 and \$6,717).

As (b) is greater than (a), the amount for (b) of \$33,850 is used as Associate 2's total tax paid.

83. Associate 3 of the IPP receives \$100,000 of firm income and has \$50,000 of deductible donations. Under:

- subparagraph 78(a) of this Guideline (tax payable on firm income only), the amount would be \$22,967
- subparagraph 78(b) of this Guideline, the amount would be \$6,717. On all taxable income (\$50,000), Associate 3 would pay \$6,717 in tax. If the firm income of \$100,000 was disregarded, Associate 3 would pay nil tax. Associate 3 is therefore considered to have paid \$6,717 tax on the \$100,000 firm income (being the difference between \$6,717 and nil).

As (a) is greater than (b), the amount for (a) of \$22,967 is used as Associate 3's total tax paid.

84. Associate 4 of the IPP receives \$100,000 of firm income and has \$100,000 of carried forward losses. Under:

- subparagraph 78(a) of this Guideline (tax payable on firm income only), the amount would be \$22,967
- subparagraph 78(b) of this Guideline, the amount would be nil. On all taxable income (nil), Associate 4 would pay nil tax. If the firm income was disregarded, Associate 4 would still pay nil tax.

As (a) is greater than (b), the amount for (a) of \$22,967 is used as Associate 4's total tax paid.

85. Associate 5 receives \$100,000 of firm income and has \$100,000 in other income and \$100,000 in other deductions and losses. Under:

- subparagraph 78(a) of this Guideline (tax payable on firm income only), the amount would be \$22,967
- subparagraph 78(b) of this Guideline, the amount would be \$22,967. On all taxable income (\$100,000), Associate 5 would pay \$22,967 in tax. If the firm income of \$100,000 was disregarded, Associate 5 would pay nil tax. Associate 5 is therefore considered to have paid a total of \$22,967 (being the difference between \$22,967 and nil).

As (a) is equal to (b), the amount of \$22,967 is used as Associate 5's total tax paid.

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86. Therefore, for the IPP and their associates, the total effective tax rate is 33.3%, calculated as follows:

$$\frac{(\$240,667 + \$22,967 + \$33,850 + \$22,967 + \$22,967 + \$22,967)}{(\$600,000 + \$100,000 + \$100,000 + \$100,000 + \$100,000 + \$100,000)} \times 100 = 33.3\%$$

**Example 5 – calculation of effective tax rate where IPP has firm-related deductions**

87. An IPP receives \$600,000 from the firm and has a \$40,000 interest deduction in relation to a working capital loan made to the firm. The IPP also has \$50,000 in other income unrelated to the firm. Under subparagraph 78(a) of this Guideline, tax is assessable on firm income of \$560,000 only, and the tax on that income would be \$222,667. The tax payable on all income (of \$610,000) would be \$245,167. However, if the firm income was disregarded, the IPP would pay \$6,717 in tax. Therefore, under subparagraph 78(b), the IPP is considered to have paid a total of \$238,450 (being the difference between \$245,167 and \$6,717). As (b) is greater than (a), IPP has a total tax paid of \$238,450.

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**Risk assessment factor 3 – appropriate remuneration**

88. Risk assessment factor 3 requires consideration of the remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm.

89. The IPP should receive assessable income from the firm in their own hands which reflects an appropriate return for the services they provide to the firm. To establish an appropriate benchmark you may consider, among other things:

- employees within the firm who perform commensurate duties and have commensurate levels of responsibility
- employees or principals in comparable firms, and
- relevant industry benchmarks for the provision of equivalent or similar services.

90. Where you do not have an immediately comparable rate of remuneration, the rate of remuneration being utilised to establish the benchmark should be adjusted to reflect differences in duties performed, responsibilities, personal risk and liability. Some relevant factors to consider for this purpose are:

- the extent and nature of client interactions
- the extent of involvement in business development
- responsibility for the attraction and retention of clients and staff
- responsibility for the supervision and performance management of professional staff and authorisation of work or advice
- the extent of involvement in firm management decisions, including voting rights
- the extent of involvement in the management of billings
- the extent of involvement in the strategic direction of the firm
- the extent of involvement in partner admissions



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- the extent of income which is at risk based on the performance of the firm
- the extent of income which is at risk based on the performance of the IPP's team, and
- the extent of income which is at risk based on the performance of the IPP.

91. Benchmarking should reflect the market comparability of remuneration for the role, using a fact-based methodology. All components of remuneration are to be included (including cash, superannuation, fringe benefits and any other benefits) to reflect the true cost to the business of employing a comparable individual.

92. The assessment of the appropriate remuneration benchmark must be reviewed annually.

93. An acceptable benchmark may be established if the business approached an employment agency and negotiated remuneration based on the considerations outlined in paragraphs 89 and 90 of this Guideline. The remuneration agreed with the employment agency should provide a reasonable benchmark of the true value of hiring a comparable individual.

#### **The ATO's compliance approach**

94. We will assess your level of risk pursuant to the criteria set out in this Guideline.

95. We will monitor outcomes for profit allocation arrangements to ensure there is no 'drift' to the limit of the green zone without commercial drivers. For example, where arrangements are in place such that the income from a firm results in 85% of profit entitlement being returned personally by an IPP over a period of time, and the operation of the arrangement changes, resulting in 55% of the profit entitlement being returned personally by the IPP, we may engage with you to determine the commercial rationale of this change, notwithstanding the arrangement may still result in a low risk assessment.

96. The risk rating is to be based on the most recently lodged tax return. However, if you feel an alternative approach is more appropriate for your circumstances, you should engage with the ATO by emailing [ProfessionalPdts@ato.gov.au](mailto:ProfessionalPdts@ato.gov.au).

97. After performing your self-assessment, if you consider that the risk rating does not reflect your underlying risk, you should engage with the ATO to discuss your circumstances.

98. Determining your risk level requires you to consider the risk assessment factors to determine your risk score.

99. If you satisfy Gateways 1 and 2 outlined in this Guideline, and your aggregate risk score is in the green zone, your arrangement will be treated by the ATO as low risk.

100. You can expect the following treatment depending on your risk zone:

<b>Risk zone</b>	<b>ATO treatment</b>
<b>Green</b>	<p>We will only apply compliance resources to review your allocation of profit in exceptional circumstances, such as where:</p> <ul style="list-style-type: none"> <li>• we are not satisfied your self-assessment is correct, or is adequately supported with evidence</li> <li>• we become concerned that higher-risk features are present in your arrangement</li> </ul>

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	<ul style="list-style-type: none"> <li>we become concerned, from our own data and analysis, that there is a change in your arrangement causing a shift towards the border of compliance</li> <li>we become concerned that your broader arrangements present a compliance risk (for example, with Division 7A of Part III of the ITAA 1936)</li> <li>your arrangement relates to a broader set of circumstances being reviewed by us</li> <li>changes to your arrangement may not have been appropriately treated or disclosed.</li> </ul> <p>Where there has been no material change, then we will generally only apply compliance resources to the arrangement to:</p> <ul style="list-style-type: none"> <li>confirm your calculations were done according to this Guideline</li> <li>confirm the absence of any exclusionary factors (for example, the high-risk features under Gateway 2)</li> <li>provide binding advice where you request it.</li> </ul>
<b>Amber</b>	<p>We are likely to conduct further analysis on your arrangement.</p> <p>We may contact you to understand the arrangement and resolve any areas of difference.</p>
<b>Red</b>	<p>Reviews are likely to be commenced as a matter of priority.</p> <p>Cases may proceed directly to audit.</p> <p>We are likely to use formal powers for information gathering.</p>

**Evidencing your self-assessment**

101. We may fact-check your assessment of your profit allocation. If you are unable to provide evidence to support your assessment, we may undertake further compliance activity.

**Transitional arrangements**

102. We encourage willing and cooperative compliance and recognise that the publication of this Guideline may cause taxpayers to review their existing arrangements. Consequently, some taxpayers may modify their arrangements to prospectively come within the green zone.

103. Taxpayers who entered into arrangements prior to 14 December 2017 are able to continue to rely on the suspended *Assessing the risk: allocation of profits within professional firms guidelines* (Suspended Guidelines) (published on ato.gov.au in 2015) for the years ending 30 June 2018, 30 June 2019, 30 June 2020 and 30 June 2021, as long as their arrangement complies with those Suspended Guidelines, is commercially-driven, and does not exhibit any of the high-risk features outlined in paragraph 42 of this Guideline. In recognition that certain arrangements considered low risk under the Suspended Guidelines may have a higher risk rating under this Guideline, we are allowing a grace period for those IPPs to take the required steps to modify their arrangements to be lower risk, if they choose. Accordingly, those IPPs may continue to apply the Suspended Guidelines to their arrangements until 30 June 2023.

104. If, upon reviewing your arrangements, it is identified that you are no longer low risk, and you wish to transition your arrangements to a lower risk zone, you can inform us of your intentions at any time. If you engage with us in good faith, this engagement will be on a 'without prejudice' basis.

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105. If you have concerns in relation to transitioning your arrangements on a prospective basis you should engage with the ATO by emailing [ProfessionalPds@ato.gov.au](mailto:ProfessionalPds@ato.gov.au). In such cases, we will expect relevant details, including:

- existing profit allocation arrangements
- proposed profit allocation arrangements and their compliance with this Guideline, and
- how the transition will be executed, and any tax consequences associated with the transition.

106. We recognise that there will be different requirements for transition depending on the current arrangements of the IPP and their firm.

107. Some arrangements will have flexibility and sufficient discretion in terms of distribution of firm income. For arrangements with these characteristics, compliance with this Guideline can be achieved by making suitable resolutions in relation to the distributions of income. In these circumstances, transitional arrangements may not be needed.

108. Where arrangements are such that compliance with this Guideline cannot be achieved without structural change, one-on-one engagement will be necessary to determine the appropriate transitional arrangements.

## Who to contact

109. If you are considering restructuring in a way that may not be assessed as low risk pursuant to this Guideline and would like to mitigate your compliance risk or to obtain a greater level of certainty, we encourage you to engage with the ATO about your proposed restructure.

110. We have a dedicated team responsible for the oversight and management of profit allocation arrangement risks. If you wish to discuss your profit allocation arrangement with the ATO you may contact us by emailing [ProfessionalPds@ato.gov.au](mailto:ProfessionalPds@ato.gov.au).

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**Commissioner of Taxation**

1 March 2021

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Status: **draft only – for comment****Appendix 1 – Case studies****Case study 1 – IPP disposes of 45% of partnership interest**

111. *Nicolas is an IPP in a partnership. His total income entitlement from the partnership is \$600,000. Nicolas has disposed of 45% of his partnership interest to an associated company.*

112. *Nicolas returns 55% of the partnership income (\$330,000) in his personal tax return. Nicolas's tax liability on this amount is \$119,167.*

113. *The company receives a total of \$270,000 from the distribution. The corporate beneficiary's tax liability on this amount is \$70,200 (26% of \$270,000).*

114. *Together Nicolas and the company have a total effective tax rate of 31.56%.*

115. *The risk assessment is:*

<b>Risk assessment factor</b>	<b>Application of criteria</b>	<b>Score</b>
<i>(1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP</i>	<i>\$330,000, or 55%, of Nicolas's profit entitlement from the partnership is returned by Nicolas personally.</i>	<i>4</i>
<i>(2) Total effective tax rate for income received from the firm by the IPP and associated entities (using tax rates applicable to the 2020--21 income year)</i>	<p><i>Nicolas pays tax of \$119,167 on the \$330,000 returned by him.</i></p> <p><i>The associated company pays tax of \$70,200 on the \$270,000 received by it, at a rate of 26%.<sup>7</sup></i></p> <p><i>The calculation of total effective tax rate is as follows:</i></p> $\frac{(\$119,167 + \$70,200)}{(\$330,000 + \$270,000)} \times 100 = 31.56\%$ <p><i>The total effective tax rate is 31.56%.</i></p>	<i>3</i>
<i>(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm</i>	<i>Not applicable. Nicolas has determined that in the circumstances it is impractical to accurately determine an appropriate commercial remuneration to benchmark against and therefore his aggregate score is determined against the first two factors only.</i>	<i>0</i>
<b>Total</b>		<b>7</b>

116. *The aggregate score of 7 places Nicolas' arrangement in the green zone (per paragraph 71 of this Guideline).*

**Case study 2 – IPP disposes of 40% of partnership interest and receives service trust income**

117. *Donald is an IPP in a partnership. The partnership has a service entity in its group that provides services to the partnership. Donald has disposed of 40% of his interest in the partnership to a discretionary trust. The beneficiary of the discretionary trust is an*

<sup>7</sup> Where examples refer to corporate taxpayers, the base rate entities rate of 26% has been used.

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associated company. An adult individual associated with Donald is a beneficiary of the service entity.

118. Donald's income entitlement from the partnership is \$800,000. There is also an entitlement to \$80,000 profit from the service trust. Therefore, the aggregate of the total profit entitlement is \$880,000.

119. Donald includes \$480,000 of the partnership income in his tax return, the corporate beneficiary includes \$320,000 in its tax return, and the service trust income of \$80,000 is distributed to the adult individual beneficiary.

120. The risk assessment is as follows:

<b>Risk assessment factor</b>	<b>Application of criteria</b>	<b>Score</b>
(1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP	\$480,000, or 54.5%, of Donald's entitlement of \$880,000 is returned by Donald personally.	4
(2) Total effective tax rate for income received from the firm by the IPP and associated entities (using tax rates applicable to the 2020–21 income year)	<p>Donald pays tax of \$186,667 on the \$480,000 returned by him.</p> <p>The associated corporate beneficiary pays tax of \$83,200 on the \$320,000 received by it.</p> <p>The individual beneficiary pays tax of \$16,467 on their \$80,000 distribution.</p> <p>The calculation of total effective tax rate is as follows:</p> $\frac{(\$186,667 + \$83,200 + \$16,467)}{(\$800,000 + \$80,000)} \times 100 = 32.53\%$ <p>The total effective tax rate is 32.53%.</p>	3
(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm	Not applicable. Donald has determined that in the circumstances it is impractical to accurately determine an appropriate commercial remuneration to benchmark against and therefore his aggregate score is determined against the first two factors only.	0
<b>Total</b>		<b>7</b>

121. The aggregate score of 7 places Donald's arrangement in the green zone (per paragraph 71 of this Guideline).

### **Case study 3 – IPP disposes of 35% of partnership interest**

122. Hilary is an IPP in a partnership and has disposed of 35% of her partnership interest to a discretionary trust. The beneficiary of the discretionary trust is an associated company. Hilary's total income entitlement from the partnership is \$250,000.

123. Hilary includes \$162,500 (65%) from the partnership in her tax return. The tax liability on this is \$45,192.

124. The corporate beneficiary includes \$87,500 (35%) in its tax return. The company's tax liability on this is \$22,750.

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125. The risk assessment is as follows:

<b>Risk assessment factor</b>	<b>Application of criteria</b>	<b>Score</b>
(1) Proportion of profit entitlement returned from the whole of firm group in the hands of the IPP	\$162,500, or 65%, of Hilary's entitlement of \$250,000 is returned by Hilary personally.	3
(2) Total effective tax rate for income received from the firm by the IPP and associated entities (using tax rates applicable to the 2020–21 income year)	<p>Hilary pays tax of \$45,192 on the \$162,500 returned by her.</p> <p>The corporate beneficiary pays tax of \$22,750 on the \$87,500 received by it.</p> <p>The calculation of total effective tax rate is as follows:</p> $\frac{(\$45,192 + \$22,750)}{(\$162,500 + \$87,500)} \times 100 = 27.17\%$ <p>The total effective tax rate of 27.17% is used.</p>	4
(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm	Not applicable. Hilary has determined that in the circumstances it is impractical to accurately determine an appropriate commercial remuneration to benchmark against and therefore her aggregate score is determined against the first two factors only.	0
<b>Total</b>		<b>7</b>

126. The aggregate score of 7 places Hilary's arrangement in the green zone (per paragraph 71 of this Guideline).

#### **Case study 4 – IPP disposes of 35% of partnership interest and has a jointly-held negatively-geared rental property**

127. Bernie is an IPP in a partnership. Bernie has assigned 35% of his interest in the partnership to a discretionary trust. The beneficiaries of the discretionary trust include Bernie's spouse, Jane.

128. Bernie's income entitlement from the partnership is \$500,000.

129. Bernie and Jane jointly (in equal shares) own a rental property which is negatively geared, and which generated a net rental loss of \$40,450.

130. Bernie includes \$325,000 (65% of the partnership income) in his tax return, and the discretionary trust includes \$175,000 (35% of the partnership income) in its tax return, which is then distributed entirely to Jane, who returns the same \$175,000 in her tax return.

131. Bernie and Jane claim the rental loss equally, that is \$20,225 each. For the purposes of calculating the total effective tax rate, deductions not related to the professional income are disregarded.

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132. The risk assessment is as follows:

<b>Risk assessment factor</b>	<b>Application of criteria</b>	<b>Score</b>
(1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP	\$325,000, or 65%, of Bernie's entitlement of \$500,000 is returned by Bernie personally.	3
(2) Total effective tax rate for income received from the firm by the IPP and associated entities (using tax rates applicable to the 2020–21 income year)	<p>Bernie pays tax of \$116,916 on the \$325,000 returned by him.</p> <p>Jane pays tax of \$49,817 on the \$175,000 received by her (her rental loss of \$20,225 is disregarded).</p> <p>The calculation of total effective tax rate is as follows:</p> $\frac{(\$116,916 + \$49,817)}{(\$325,000 + \$175,000)} \times 100 = 33.35\%$ <p>The total effective tax rate is 33.35%.</p>	3
(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm	Not applicable. Bernie has determined that in the circumstances it is impractical to accurately determine an appropriate commercial remuneration to benchmark against and therefore his aggregate score is determined against the first two factors only.	0
<b>Total</b>		<b>6</b>

133. The aggregate score of 6 places Bernie's arrangement in the green zone (per paragraph 71 of this Guideline).

#### **Case study 5 – IPP is a trustee partner**

134. Frank is an IPP in a professional firm that operates as a partnership of discretionary trusts with three equal discretionary trust partners (with individual representative IPPs as trustees, of which Frank is one) and 10 employees.

135. The professional firm generates a profit of \$1.5 million for the year.

136. The partnership distributes Frank's \$500,000 profit share to his discretionary trust. The discretionary trust subsequently distributes to its beneficiaries as follows:

- \$300,000 to Frank
- \$200,000 to a company owned and controlled by Frank's spouse.

137. The risk assessment is as follows:

<b>Risk assessment factor</b>	<b>Application of criteria</b>	<b>Score</b>
(1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP	\$300,000, or 60%, of Frank's entitlement of \$500,000 is returned by him personally.	4
(2) Total effective tax rate for income received from the firm by the IPP and associated entities (using	Frank pays tax of \$105,666 on the \$300,000 returned by him.	3

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<i>tax rates applicable to the 2020–21 income year)</i>	<i>The corporate beneficiary pays tax of \$52,000 on the \$200,000 distributed to it. The calculation of total effective tax rate is as follows: <math display="block">\frac{(\\$105,666 + \\$52,000)}{(\\$300,000 + \\$200,000)} \times 100 = 31.53\%</math> The total effective tax rate is 31.53%.</i>	
<i>(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm</i>	<i>Not applicable. Frank has determined that in the circumstances it is impractical to accurately determine an appropriate commercial remuneration to benchmark against and therefore his aggregate score is determined against the first two factors only.</i>	<i>0</i>
<b>Total</b>		<b>7</b>

138. The aggregate score of 7 places Frank's arrangement in the green zone (per paragraph 71 of this Guideline).

**Case study 6 – IPP returns 100% of the profit received after a less profitable year**

139. Felix is an IPP in a firm which operates as a partnership of discretionary trusts. Due to some adverse business impacts, the firm income is significantly decreased. Felix's total income entitlement from the firm is \$65,000. He returns 100% (that is, \$65,000) of the income in his personal tax return. Felix has a tax liability of \$11,592 on this income.

140. The risk assessment is as follows:

<b>Risk assessment factor</b>	<b>Application of criteria</b>	<b>Score</b>
<i>(1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP</i>	<i>\$65,000, or 100%, of Felix's entitlement of \$65,000 is returned by Felix personally.</i>	<i>1</i>
<i>(2) Total effective tax rate for income received from the firm by the IPP and associated entities (using tax rates applicable to the 2020–21 income year)</i>	<i>As Felix has returned 100% of his entitlement in his personal tax return he is not required to assess against other risk assessment factors.</i>	<i>0</i>
<i>(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm</i>	<i>As Felix has returned 100% of his entitlement in his personal tax return he is not required to assess against other risk assessment factors.</i>	<i>0</i>
<b>Total</b>		<b>1</b>



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141. As Felix has returned 100% of his profit entitlement in his personal tax return, he is automatically in the green zone and there is no requirement to assess against the other risk factors.

**Case study 7 – IPP disposes of 40% of partnership interest and assesses against the appropriate remuneration factor.**

142. Jacinta is an IPP in a partnership. Her total income entitlement from the partnership is \$600,000. Jacinta disposes of 40% of her partnership interest to a discretionary trust. Therefore, Jacinta returns 60% of her entitlement in her personal tax return (that is, \$360,000). The tax liability on this amount is \$132,667.

143. The discretionary trust's beneficiaries are Jacinta's spouse and a corporate beneficiary. The beneficiaries receive a total of \$240,000 (being 40% of \$600,000) from the firm. Jacinta's spouse receives \$180,000 and the corporate beneficiary receives \$60,000. Jacinta's spouse has a \$51,667 tax liability on his distribution and the corporate beneficiary has a tax liability of \$15,600 on its distribution of \$60,000 (26% of \$60,000). When this is combined with Jacinta's effective tax rate of 36.85%, the total effective tax rate is 33.32%.

144. The risk assessment is as follows:

<b>Risk assessment factor</b>	<b>Application of criteria</b>	<b>Score</b>
(1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP	\$360,000 of \$600,000 results in 60% of the IPP's profit entitlement from the firm group being returned by the IPP personally.	4
(2) Total effective tax rate for income received from the firm by the IPP and associated entities (using tax rates applicable to the 2020–21 income year)	<p>Jacinta pays tax of \$132,667 on the \$360,000 returned by her.</p> <p>Jacinta's spouse pays tax of \$51,667 on \$180,000 received by him.</p> <p>The corporate beneficiary pays tax of \$15,600 on the \$60,000, at a rate of 26%.</p> <p>The calculation of total effective tax rate is as follows:</p> $\frac{(\$132,667 + \$51,667 + \$15,600)}{(\$360,000 + \$180,000 + \$60,000)} \times 100 = 33.32\%$ <p>The total effective tax rate is 33.32%.</p>	3
(3) Remuneration returned in the hands of the IPP as a percentage of the commercial benchmark for the services provided to the firm	<p>Jacinta has reflected on her contribution to her firm and compared her contribution to that of other employees with commensurate duties and responsibilities. She has considered all of the factors in paragraphs 89 and 90 of this Guideline.</p> <p>Jacinta has considered the additional duties, responsibilities, risks and roles that she undertakes in the firm and the commercial remuneration that she has arrived at for her role is \$450,000.</p> <p>To determine Jacinta's remuneration as a percentage of the commercial benchmark for her services, the following formula is used</p> $\frac{\text{Remuneration received}}{\text{Commercial benchmark}} \times 100$	5

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	<i>That is:</i> $\frac{\$360,000}{\$450,000} \times 100 = 80\%$	
		<b>12</b>

145. *The aggregate score of 12 places Jacinta’s arrangement in the amber zone for assessment against all three factors (per paragraph 71 of this Guideline).*

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## Your comments

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146. You are invited to comment on this draft Guideline, including the proposed date of effect. Please forward your comments to the contact officer by the due date. In particular, we are interested in your views on whether the:

- description of commerciality in Gateway 1 provides clear guidance on application of the gateway to your circumstances. If not, how might it be better articulated?
- description of high-risk features in Gateway 2 provides clear guidance on application of the gateway to your circumstances. If not, how might it be better articulated?
- examples provided are useful and/or if there are other scenarios that would assist self-assessment of an arrangement and application of the risk scoring method.

147. A compendium of comments is prepared when finalising this Guideline, and an edited version (names and identifying information removed) may be published to the Legal database on ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** 26 March 2021  
**Contact officer:** Simon Webster  
**Email address:** [simon.webster@ato.gov.au](mailto:simon.webster@ato.gov.au)  
**Telephone:** (03) 9275 5328

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

IT 25; IT 2121; IT 2330; IT 2503; IT 2639;  
TR 2001/7

*Legislative references:*

- ITAA 1936 100A
- ITAA 1936 Pt III Div 7A
- ITAA 1936 Pt IVA
- ITAA 1997 Pt 2-42

*Cases relied on:*

- Taxation, Commissioner of (Cth) v Everett [1980] HCA 6; 143 CLR 440; 10 ATR 608; 80 ATC 4076
- Commissioner of Taxation (Cth) v Galland [1986] HCA 83; 162 CLR 408; 18 ATR 33; 86 ATC 4885

*Other references:*

[Everett assignments](#)

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ATO references

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BSL: PW  
ATOlaw topic: Income tax ~~ Assessable income ~~ Business and professional income ~~  
Other

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